IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1053 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BAYABEN W/O BUDHARAM MAHESHWARY - Petitioner(s)

Versus

DEV MOHANDAS DADLANI & 2 - Respondent(s)

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Appearance :

MR PN BAVISHI for Petitioner(s) : 1,1.2.1
NOTICE SERVED for Respondent(s) : 1 - 2.
MR YN RAVANI for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 16/02/2006

ORAL JUDGMENT

1.By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioners – original claimants have challenged the legality and validity of

the judgment and award passed by the learned M.A.C.T. (Auxiliary-I), Kutch at Bhuj, dated 6.8.1996 passed in M.A.C. Petition No.83 of 1991 in dismissing the same.

2.It appears from the record that the original claimants submitted an application for motor accident compensation before the M.A.C.T. (Auxiliary-I), Kutch at Bhuj, being M.A.C. Petition No.83 of 1991 and claimed Rs.9999/- towards the compensation for motor accident alleged to have been happened on 23.3.1990. It was the contention on behalf of the original claimants that while Budharam Khimji Maheshwari i.e. claimant No.1 was going and passing towards opposite Lions Club Tagor Road, Gandhidham, at the relevant time, the respondent No.1 herein, the scooter driver was driving rashly and negligently and the said scooter dashed with the cycle of the original claimant No.1 which was resulted into grievous injuries to the original claimant No.1. It was the case on behalf of the original claimants that the claimant No.1 was hospitalized and he took treatment at Rambaug Hospital, Gandhidham for a month. He claimant Rs.2000/- towards medicines, Rs.2000/-towards loss of income and Rs.5000/-towards mental pain, shock and suffering, in

all claimed Rs.9999/-. Initially, he claimed Rs.11,999/- however, subsequently, the same was restricted to RS.9999/-. The Insurance Company appeared and filed the written statement and denied the liability. Considering the fact that the original claimants did not produce any documentary evidences such as F.I.R., Panchnama of the scene of offence and the Medical Certificate in order to substantiate the claim and factum of the accident, the learned Tribunal dismissed the said claim petition. Being aggrieved and dissatisfied with the same, the petitioners have preferred the present Special Civil Application.

3. At the time of hearing of the present Special Civil Application, the learned counsel appearing on behalf of the petitioners is not in a position to satisfy this Court as to how the judgment and award passed by the learned Tribunal is errorneous and/or illegal and/or contrary to the evidences on record. He is also not in a position to satisfy this court with regard to the factum of accident by way of cogent evidences. Even before this Court also, no documentary evidences have been produced. In absence of any cogent documentary evidences, the factum of accident itself could not be

proved.

4. Under the circumstances, it cannot be said that the judgment and award passed by the learned Tribunal in dismissing the claim petition in absence of any cogent documentary evidences is in any way illegal and/or contrary to the evidences on record. Under the circumstances, no interference is called for exercising powers under Articles 226 and 227 of the Constitution of India.

5. For the reasons stated above, the petition fails. Rule is discharged, however, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.